COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

Suffolk, ss. May, 2003

Policy Statement by the Justices of the Supreme Judicial Court Concerning Publication of Court Case Information on the Web

After considering recommendations of the Trial Court's Project Advisory Board and the Web Advisory Board appointed by this Court, as well as comments of the Chief Justice for Administration and Management (CJAM), the Departmental Chief Justices and others, we adopt this policy concerning the publication of court case information on the World Wide Web (Web). This policy is intended to govern public access to docket and calendar information that is or will be maintained in computerized case management systems. We note that the law does not require courts to provide electronic access to court case information and this policy does not create any right to such access. At this time, the policy does not allow documents submitted to a court in connection with a case to be published on a Court Web site. We expect that the policy will evolve over time to reflect technological developments as well as the experience of litigants, attorneys and court personnel.

In adopting this policy, we recognize that the rapid pace of technological development has added a new dimension to efforts by courts and others to balance privacy concerns with principles of open access. The ramifications of publishing information on the Web are qualitatively different from those of making information publicly available at a courthouse. Information published on the Web may be searched electronically, correlated with information from other sources, and downloaded into private databases. For these reasons, we have concluded, at least initially, that an intermediate level of access to court information is appropriate on the Web, one that provides less information than is available at a courthouse.

This policy attempts to balance our dual interests in making information about the courts available and accessible, and in protecting personal and sensitive information from indiscriminate disclosure. Providing case information on the Web will make courts more accessible to the people who use them. Litigants and attorneys will be able to check easily the status and scheduling of cases in which they are involved. This policy will allow the public to learn more about how the judicial system operates by providing basic information about individual cases. The availability of case information on the Web should also reduce the number of telephone calls to the courts seeking such information, thereby freeing court personnel for other tasks.

In response to comments expressing concerns about the substantial intrusion into privacy interests that could accompany publication of personal information on a Court Web site, certain

personal identifying information is excluded from publication on a Court Web site. In response to the concerns underlying the Criminal Offender Record Information (CORI) statute, G. L. c. 6, § 172, this policy excludes from Trial Court case information Web sites information that would identify a specific criminal defendant by name.

- **A.** <u>Trial Court Case Information</u>. The following principles should guide publication of case information on a Trial Court Web site that is available to the general public.
 - 1. **Provide some information about every case**. Except for cases categorically excluded as permitted below, and subject to the limitations set forth below, some information about every case contained in a computerized case management system should be provided on a Court Web site.
 - 2. **Civil cases.** For civil cases, other than those categorically excluded from a Court Web site, and subject to the limitations set forth below, all basic case information should be provided. This includes the case caption, names of the parties, docket number, judge, court in which the case is pending, case type, attorney information, and past and future calendar events. Docket entries should be included unless they are excluded pursuant to paragraph A.8.
 - 3. **Criminal cases.** At this time, information similar to that provided for civil cases should be provided for criminal cases except that the defendant's name should not be disclosed. Therefore, a Trial Court Web site should include the docket number, indicate that it is a criminal case, and provide information about the offenses (if it is possible to do so without identifying a defendant or victim), and about the attorneys involved in the case. With respect to a defendant, the first initial of the defendant's last name (e.g., Commonwealth v. R.) may be used. A Trial Court Web site should not list the full case caption or any information that is likely to identify defendants, victims, or witnesses (other than expert witnesses). Information about the progress of the case, including past and future calendar events, and the type of case, should be included. Docket entries should be included unless they are excluded pursuant to paragraph A.8.
 - 4. **Impounded cases.** For impounded cases, a Court Web site should include the case docket number, indicate that the case is impounded (for instance, by denoting the case caption as "Impounded Case"), give information about the progress of the case (e.g., entry date, case status, status date), provide the name of the judge and, except where an attorney appears pro se, information about the attorneys who appear in the case. Any information that might identify the parties or the type of case, including docket entries, should be excluded from the Court Web site.
 - 5. Case information that is excluded from public access by statute, case law or Rule of Court should not be included on a Court Web site.

- 6. **Personal identifying information should not appear on a Court Web site.** To guard against needless risk of harm and invasion of privacy, no personal identifying information other than the names of parties or others involved in a case should be available on a Court Web site. Thus, no information regarding an individual's address, telephone number, social security number or date of birth should appear. This does not preclude listing business addresses or telephone numbers for attorneys involved in a case.
- 7. The CJAM, in consultation with the Departmental Chief Justices, and subject to the approval of the Supreme Judicial Court (SJC), may decide that, because of the sensitive nature of the issues involved, certain categories of cases or information should be excluded from a Trial Court Web site even if the cases or information are not impounded or excluded from public access by statute, case law or Rule of Court. If certain categories of cases or information are excluded, that fact and the reason for the exclusion should be explained as part of the general information appearing on the Court Web site.
- 8. **Docket Entries**. The CJAM, in consultation with the Departmental Chief Justices, and subject to the approval of the SJC, may decide that certain docket entries should be excluded or sanitized (e.g., by replacing the name of the victim with "[victim]"). However, it must be made clear, in each instance where the docket entry has been excluded or sanitized, that the docket entry on the Court Web site is not the same as the docket entry available at the courthouse where the case is or was pending. In criminal cases, docket entries should not be published if they are likely to identify a defendant or a victim. The CJAM might decide, for example, that, where the practice of a particular department has been to create docket entries that record the type of information this policy seeks to exclude, no docket entries should be published on the Web with respect to cases from that department. Assuming that the Trial Court's new Mass Courts system will be able to provide docket entry information for publication on the Web in accordance with this policy, it might be decided that only docket entries created after *MassCourts* is in place should be published on the Web.
- 9. **Archival of data**. Subject to the approval of the SJC, the CJAM may adopt a policy that, where a case has been disposed for a certain period of time and the time for appeal has expired, and where the Trial Court has decided to archive the data regarding the case in its case management system(s), less information about such archived cases should be provided on a Trial Court Web site than contemplated by this policy.
- B. <u>Appellate Court Case Information</u>. On an Appellate Court case information Web site, civil cases and impounded cases should be treated in the same manner as described in

paragraphs 2, 4, 5 and 6 in section A above. Criminal cases should include the same type of information as civil cases, but will not include the Trial Court docket number. An Appellate Web site may include information regarding the following types of cases:

- 1. In the Supreme Judicial Court for the Commonwealth: Full Court cases, applications for Direct Appellate Review and Further Appellate Review, and Original Entry cases.
- 2. In the Supreme Judicial Court for Suffolk County: Single Justice cases and Bar Docket cases.
- 3. In the Appeals Court: Panel cases and Single Justice cases.
- **C.** <u>Searches</u>. Case information may be located on a Court Web site through one or more of the following types of searches, unless with respect to a Trial Court Web site the CJAM, in consultation with the Departmental Chief Justices, and subject to the approval of the SJC, decides to limit the searches available for certain types of cases.
 - 1. **Civil cases.** Searches by docket number, party name, judge, attorney, calendar event date, court and type of case should be permitted.²
 - 2. **Criminal cases.** Searches by docket number, judge, attorney, calendar event date and court should be permitted. Searches by defendant name will not be permitted with respect to Trial Court criminal cases at this time, but will be permitted with respect to criminal cases in the appellate courts. Searches by victim name or witness name will also not be permitted.
 - 3. **Impounded cases.** Searches by docket number, judge, attorney and court should be permitted, but searches by party name, victim name or witness name will not be permitted. Impounded cases may also appear on lists of cases scheduled for hearing or trial on a certain date.
 - 4. **Narrowing searches**. Court Web sites may provide means for users to narrow the above searches, such as by limiting searches to a particular county or courthouse, or to a particular year of filing.

¹The SJC will consider requests from the CJAM to treat certain types of appellate civil cases originating from a particular Trial Court Department in a more restricted manner.

²Searches by judge will be most useful where a case is assigned to a particular judge. It may not be practical or useful to provide judge searches for cases considered by multiple judges at different times.

- 5. **Breadth of searches**. Except where a single division of a Trial Court Department covers the entire state, statewide searches should not be permitted. It is anticipated that, normally, searches will be by Department or Division, and in a particular county. It is understood that technical, performance or budgetary considerations may result in further limitations on the breadth of searches that may be performed.
- D. <u>Access at Terminals in a Courthouse</u>. If computer terminals are made available in individual courts for public use, they should provide access to the full public case docket and calendar information for cases in that court, but should not provide access to more information about cases in other courthouses and other courts than this policy permits on a Court Web site.

E. <u>Heightened access by attorneys and litigants to information about cases in which they are directly involved.</u>

- 1. Provided that it can be done securely through a registration system (based on user names and passwords or other reliable means of identification) or other authentication mechanism,³ and subject to technical, budgetary and other resource limitations, a Court Web site may provide attorneys (and others within their firms) and litigants with the same amount of information about any case in which they are directly involved as they may obtain at the courthouse, unless it is a case categorically excluded from a Court Web site pursuant to paragraph A.7 above, or is information covered by paragraphs A.4 and A.5 above. The principal significance of this provision is that attorneys and litigants will be able to gain access to docket entries in their own cases, where those docket entries are excluded from general public access pursuant to section A.8 above.
- 2. Those whose only involvement in a case is as, or on behalf of, an amicus curiae, or as or on behalf of someone who is unsuccessful in seeking to become a party to the case, should not receive the heightened access authorized by this section.
- 3. Attorneys, litigants and the media should have no greater access than the general public has to information about cases in which they are not directly involved.
- 4. For technical or budgetary reasons, it may not be possible to provide parties (including pro se litigants) and out-of-state attorneys with a heightened level of

³We can envision that a court case management system of the future might create a unique password for each case, which password might be provided to each party and attorney involved in the case. This password, together with the case docket number, would enable them to obtain access to more information about the case than is made available to the general public on that Web site.

access to information about their own cases in the near future or at the same time such heightened access is provided to attorneys who are licensed to practice law in the Commonwealth. However, the courts should work toward the goal of being able to do so.

F. <u>Effective Date</u>. This policy will become effective on June 1, 2003. On or after that date court case information may be published on the Web in accordance with this policy, whenever the affected court is prepared to do so.

The Trial Court will have until December 31, 2003, to bring any existing systems that provide court case information on the Web or at the court house into compliance with this policy. These systems include the existing Trial Court Information Center Web site (TCIC), which provides information about Superior Court cases only to registered attorneys and certain other registered users. They also may include certain courthouse terminals, which may provide access to more information than permitted by Clause D of this policy. Compliance, in this context, means that information will no longer be provided in a manner that is inconsistent with this policy. The provision of additional information (e.g., about impounded cases) or search capabilities not currently provided in the TCIC may be deferred until *MassCourts* is deployed.

It is expected that this policy will be reexamined periodically to consider whether changes are appropriate in light of experience and advances in technology.